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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2015-2016

CR-13-0498

Jerry Dewayne Bohannon

v.

State of Alabama

Appeal from Mobile Circuit Court
(CC-11-2989 and CC-11-2990)

On Return to Remand

BURKE, Judge.

On October 23, 2015, this Court affirmed the Mobile Circuit Court's judgment as to one of Jerry Dewayne Bohannon's two convictions for capital murder, pursuant to § 13A-5-

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40(a)(10), Ala. Code 1975, because Bohannon murdered Anthony Harvey and Jerry DuBoise by one act or pursuant to one scheme or course of conduct. The case was remanded, however, with directions for the circuit court to vacate one of Bohannon's convictions, and sentence, because of a violation of the Double Jeopardy Clause. On remand, the circuit court held a hearing at which Bohannon, his counsel, and the prosecutor were present. Bohannon's conviction in case no. CC-11-2990 and the sentence imposed in that case were set aside, and the conviction and sentence in CC-11-2989 were left standing. Therefore, the circuit court properly complied with this Court's directions.

Because we were remanding this case, this Court, on original submission, pretermitted a plain-error review of Bohannon's sentencing proceedings as well as a review pursuant to § 13A-5-53, Ala. Code 1975, of the propriety of his capital-murder conviction and his sentence of death. Bohannon was indicted for, and was convicted of, murdering Harvey and DuBoise by one act or pursuant to one scheme or course of conduct, a violation of § 13A-5-40(a)(10). The jury recommended, by a vote of 11 to 1, that Bohannon be sentenced

to death. The circuit court followed the jury's recommendation and sentenced Bohannon to death.

The record shows that Bohannon's sentence was not imposed under the influence of passion, prejudice, or any other arbitrary factor. See § 13A-5-53(b)(1), Ala. Code 1975.

The only aggravating circumstance established in this case was that two or more persons were killed pursuant to one act or pursuant to one scheme or course of conduct, § 13A-5-49(9), Ala. Code 1975. The circuit court found the existence of one statutory mitigating circumstance -- namely, that Bohannon had no significant history of prior criminal activity. § 13A-5-51(1), Ala. Code 1975. The circuit court found the following nonstatutory mitigating circumstances:

"a. Defendant's character, life, and record: This Court charged the jury that the jury could consider in the penalty phase, as mitigators, that the defendant Bohannon was a good skilled worker who contributed to society, who had done nice things for his family and other people, and had been good to his stepson. The mitigation specialist who testified stated that she had interviewed twenty-five to thirty-five people and that all the witnesses had nothing but good things to say and she didn't find anything bad in Bohannon's background. The Court heard from character witnesses including two retired policemen who believed that the defendant was a good worker and helpful person. The Court also heard from the defendant's teenage stepson who said he considered the defendant to be

a good person and a better parent than his real father. The Court finds that the defendant's character, life and record are nonstatutory mitigators which exist and the Court gives them some weight.

"b. Mercy: While mercy has been considered because of the human condition and a life at risk, there has been nothing other than a generalized request for mercy put before this Court, which has been considered and given some weight."

(C. 80-81.) The circuit court found that the aggravating circumstance outweighed the mitigating circumstances and sentenced Bohannon to death.

This Court has independently weighed the aggravating circumstance and the mitigating circumstances, as required by § 13A-5-53(b)(2), Ala. Code 1975, and is convinced, as was the circuit court, that death was the appropriate sentence for the double homicide of Harvey and DuBoise.

Additionally, Bohannon's death sentence is neither disproportionate nor excessive as compared to the penalties imposed in similar cases. See Harris v. State, 2 So. 3d 880 (Ala. Crim. App. 2007); Snyder v. State, 893 So. 2d 488 (Ala. Crim. App. 2003).

Last, as required by Rule 45A, Ala. R. App. P., this Court has searched the record for any error that might have

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affected Bohannon's substantial rights, and we have found none.

Accordingly, Bohannon's sentence as to his conviction in case no. CC-11-2989 is hereby affirmed.

AFFIRMED.

Windom, P.J., and Welch, Kellum, and Joiner, JJ., concur.